IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

ARBITRATION PETITION NO. 27 OF 2007

Suresh Mani — Petitioner

vs.

1. Shah Vora Tiles & Marble Industries Pvt.Ltd. & ors. — Respndents

Mr.A.Y.Bookwala, Sr.Counsel with Mr.Cyrus Ardeshir i/b.M/s.Kanga & Co. for the petitioners.

Mr.D.D.Madon, Sr.Counsel with Mr.A.H.Delhiwalla i/b.M/s.Madekar & Co. for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATE OF PRONOUCING JUDGMENT: 27th June, 2007

JUDGMENT :

The petitioner and respondents have entered into a Business Centre Agreement dated 18.2.2006 in respect of the property as described in the said Agreement which is as follows:

> "AND WHEREAS the Centre offers a ready to use office, providing facilities and services which covers / includes 3 (three) cabins, 5 (five) work stations (table spaces) and a common use of conference room which is well equipped and furnished with electronic intercom system for providing business facilities and services at the Centre for certain hours per working day."

2. The Business Centre should remain open on all working days from 7 a.m. to 9 p.m. subject to change in working hours from time to time. However, nothing should restrict the client (the petitioner) from the use

of the said facilities and services even on Sunday and/or beyond the working hours if prior intimation is given to the party respondents.

3. By letter dated 26.1.2007 the petitioners has informed to the respondents a desire to hand over the vacant possession on and after February, 2007, upon receipt of the amounts towards security deposit of Rs.two crores with interest at 12% p.a. an aggregate amount of Rs.2,25,00,000/-.

4. The petitioners thereafter by letter dated 12.2.2007, as there was no response, invoked the arbitration clause and again submitted their readiness and willingness to hand over the possession of the premises on receipt of the aforesaid amount.

5. By letter dated 12.2.2007 the respondents informed to the petitioner that they are making efforts to re-pay the amount within specified period with interest and further informed that till the refund they would permit the petitioner to use the Centre facilities as provided under the Agreement.

6. The petitioner, therefore, has filed the present petition on 13.2.2007 to claim interim protection as prayed pending the decision of constitution of Arbitral Tribunal and further till the receipt of their security

deposit as referred above.

7. On 14.2.2007 this Court has passed the following

order:

> "....."
>
> 3. Counsel for the petitioner hands in affidavit of 14th February, 2007. Undertakings mentioned in para 5 of the affidavit is recorded and accepted.
>
> 4. In view of the undertaking the respondent has no objection for granting ad interim relief in terms of prayer clause (b).
>
> 5. As regards ad interim relief prayed in prayer clause (c) counsel for the respondent submitted that the entire premises is not in possession of the petitioner. The petitioner is in occupation of only a portion. The petitioner is allowed to occupy only part of the premises mentioned in the business agreement.
>
> 6. In view of the submissions as above there shall be order in terms of prayer clause (b). In addition, by way of ad interim order it is ordered that the petitioner shall not disturb the occupation of the petitioner of the premises mentioned in the business centre agreement.
>
> 7. S.O. for 4 weeks."

8. The undertaking mentioned in para 5 of the affidavit

of Suresh Mani dated 14.2.2007 is reproduced as under:

> "5. I undertake to this Hon'ble Court that I will vacate and hand over occupation of the premises to the Respondents simultaneously on the Respondents refunding to me the said sum of Rs.2,25,00,000/- (Rupees Two crores twenty five lacs only) with further interest on a sum of Rs.2,00,00,000/- at the rate of 18% per annum from 16th February 2007 till payment and/or realization by Pay Order or Demand Draft in full. This undertaking given by me

> is subject to further orders passed in the arbitration proceedings."

9. Based on this the respondents have no objection for granting ad-interim relief in terms of prayer clause (b) which is reproduced as under:

> (b) that prior to and during the Arbitral proceedings and till making of the Arbitration Award and for a further period of 120 days thereafter this Hon'ble Court be pleased to issue a temporary order and injunction restraining the Respondents, from in any manner whatsoever selling, alienating, encumbering, transferring, mortgaging, dealing with and/or creating any third party rights and/or interest in respect of the said premises more particularly described in (Exhibit "A" hereto").

10. The respondents have filed their reply and resisted the interim relief.

11. The learned senior counsel for the respondents further submitted that the petitioners are misusing the said order and sought injunction of the entire property of the office premises No.707 on the 7th floor of the Building known as "Raheja Centre". The petitioner is also therefore misusing the said order and locked the said premises.

12. The learned senior counsel for the petitioners, however, denying the same.

13. The learned senior counsel makes a statement, on

instructions, that the Centre Office which is under use is only as described in the Business Centre Agreement and which is the part and parcel of premises no.707 as referred above. In any event, the learned senior counsel for the petitioner makes a statement that their claim and/or right is restricted only to the premises as referred in the Business Centre Agreement. The ad-interim relief as granted, is therefore restricted to the premises as per the Business Centre Agreement. The order is modified accordingly.

14. In so far as the prayer (c) is concerned, in view of prayer clause (b) and in view of the undertaking given and further in view of the fact that the petitioner has already invoked the arbitration clause and admittedly till this date, the respondents have not refunded the security deposit and considering undisputed facts and circumstances of the case, I am of the view that the petitioner has made out a prima facie case in his favour. The balance is convenience also lies in his favour.

15. The matter could not be settled though it was adjourned from time to time. The interim order granted by this Court on 14.2.2007 has been in force since February, 2007.

16. In view of this, I am of the view that the

petitioner is entitled for the reliefs in respect of the premises described in the Business Centre Agreement dated 18.2.2006. The interim order dated 14.2.2007 is accordingly modified. Though the learned senior counsel for the petitioner makes submission that the description of the property in Exhibit "A" is nothing but the property as per the Business Centre Agreement, yet he has no objection if it is restricted to the premises as described in the Business Centre Agreement dated 18.2.2006.

17. Taking all this into account, the Petition is allowed in terms of prayer clauses (b) and (c) in respect of the property as described in Business Centre Agreement dated 18.2.2006. Prayer (c) reads thus:

> (c) that prior to and during the Arbitral proceedings and till making of the Arbitration Award and for a further period of 120 days thereafter this Hon'ble Court be pleased to issue an order and injunction restraining the Respondents from in any manner disturbing or interfering with the possession of the petitioner in respect of the said premises as more particularly described in (Exhibit "A" hereto).

18. No costs.

[ANOOP V. MOHTA,J.]